

JUVENILE IMPRISONMENT

ABSTRACT: Juvenile delinquency is a negative social phenomenon and a socio-legal problem that has always existed in all societies of the world. In our country, the social response to juvenile crime has evolved over time. Initially, juveniles were treated as adults, and the primary purpose of punishment was repression. However, with the adoption of the Law on Juvenile Offenders and Criminal Protection of Juveniles in 2005, significant changes occurred. The new system of punishment primarily focuses on the protection, correction, and rehabilitation of juveniles. For this purpose, corrective orders are issued first. However, when the dimensions of juvenile crime surpass the possibilities offered by the application of corrective orders, criminal sanctions are imposed. Juvenile imprisonment is the only punishment recognized by our juvenile criminal legislation. It is applied as an “ultima ratio” for older juveniles, only when the legal requirements are met. The subject of the paper is precisely the analysis of the content of the sentence of juvenile imprisonment, the legal conditions for imposing it and the manner of its execution. The aim is to review the fundamental positive legal decisions in the Republic of Serbia related to the sentence of juvenile imprisonment and the criminal legal status of juveniles.

Keywords: *juvenile detention, juvenile delinquency, criminal sanctions, juveniles.*

* LLM, PhD candidate at the Faculty of Law Novi Sad, The University of Novi Sad, Serbia, e-mail: grbicbogdanka@gmail.com



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1. Introduction

“Youth folly” or “They’re just a kid”. Sentences that can be heard very often, which justify the most diverse actions of minors. However, can these and similar sentences be used in the context of a kind of justification for each of their actions? Psychological research indicates that children from an early age have a perception of the good and bad things they do, and that they often, and for the fun of it, examine the limits to which they can go unpunished. In addition, due to the general development of civilization, the pace of modern life has become accelerated, parents have less and less time available to spend with their own children, and they are increasingly “left to fend for themselves” and are rapidly maturing under the influence of the aforementioned development. Today’s fifteen-year-old can hardly be compared to a minor at that age 20 or 30 years ago, so the criminal offenses that today’s minors commit are nothing like those innocuous offenses that used to be committed by “wayward children” which were most often left unreported. Namely, according to the available statistics in our country, the structure of committed juvenile crime is dominated by property crime, especially criminal offenses of theft and aggravated theft, but in addition, other forms of criminal behavior are present, such as light and severe bodily injury, violent behavior and unauthorized possession of narcotics. What is particularly worrying is the execution of even the most brutal crimes such as murders and aggravated murders, which we unfortunately witnessed this year. These data are difficult to comprehend, because there are still prejudices in the public that minors commit only near negligible criminal offenses, which do not have significant consequences, and that it is enough just to warn them, not to punish them, for the commission of these offenses. However, even though the perpetrator of the crime is categorized as a minor, their crime often goes beyond what the public usually imagines that a person at that age can even think, let alone do. In such situations, the state must have criminal law mechanisms to sanction them, and this mechanism is the punishment of juvenile imprisonment as the only punishment known to our juvenile criminal legislation and which is used as an “ultima ratio” when the juvenile cannot be affected by other criminal law instruments. Also, this matter deserves special attention because juvenile delinquency is one of the most important indicators of the criminal situation in the country, and returning minors to the “right path” is the primary and responsible task of every society.

2. Development of the idea of the special position of juvenile offenders in criminal law

Special treatment of minors in the criminal justice system is not a new concept. Back in Roman law, there was the principle of “*Doli incapax*” or “inability to commit a crime” that protected children from prosecution because of the presumption of lack of ability and understanding required to be guilty of a crime (Smith, 1994, p. 427). Although in Roman law it was only about the beginnings of a different approach to minors and their status was not precisely determined, it was still pointed, as early as then, to a different level of their mental development as a reason for different criminal law treatment compared to adults. What is particularly interesting is the fact that since ancient times, socially unacceptable behavior of minors has been described in almost the same way as today. Thus, Socrates also said that: “Children now love luxury, they have bad behavior, contempt for authority, they show disrespect to elders and love chatter instead of learning. Children no longer get up when the elderly enter the room. They contradict their parents, chatter in front of people, greedily swallow treats from the table, cross their legs and tyrannize their teachers” (Stajić & Stanarević, 2011, p. 127).

If the further position of juveniles in criminal law is observed throughout history, it can be concluded that they have gone through several stages or phases of development, i.e. two general models can be distinguished in which juvenile crime was approached in a differentiated way. It is a protective model – a model of welfare and a justice model (Radovanov & Joksić, 2018, p. 158).

- a) The welfare or protective model is linked to the beginning of the 20th century and is based on the assumption that juvenile delinquency is the result of social or environmental factors and that therefore a young person cannot bear individual responsibility. Thus, society is perceived as the cause of criminal behaviour of minors and accordingly, the primary objective of juvenile justice is to provide appropriate assistance or treatment for minors – not to punish them, but to protect them. This model focuses on the needs of minors, establishing and treating possible diagnoses if the minor has them, and is based on more informal procedures (Dignan, 2002, p. 3).
- b) The justice model emerges in the second half of the 20th century and is created as a critique of the welfare model. In contrast, it emphasizes the responsibility of the minor, their punishment and procedural formalities. The justice model is based on the assumption that young people also have freedom of will and as such, they

should be held criminally responsible for their actions. It follows from the above that the primary focus is on the criminal offenses of minors, and not on their welfare and needs (Dignan, 2002, p. 4).

The approach of modern legal systems in relation to juvenile delinquency is also based on the described models, which determine the status of juveniles in criminal law primarily on the basis of age. Accordingly, criminal legislations set an age limit that distinguishes between the category of adults and minors and on the basis of which the limit of criminal liability is set. The basis for this type of arrangement lies in the fact that the personality of the minor, as well as their special biopsychological unit, requires and justifies the existence of a special criminal legal status. Drakić emphasizes that the personality of minors goes through certain stages of biological, psychological and social development and that, accordingly, the process of their maturing is very complex, so it happens that the psychological life of minors cannot be accompanied by rapid biological and physical development (Drakić, 2010, p. 12). Therefore, youth is the period of life when the most intense development of cognitive, emotional and conative abilities occurs, when different knowledge is acquired and different habits, attitudes and values are adopted. During these years of life, individuals face numerous tasks that are placed before them, and one of the most important requirements is to build their own identity and personality. However, as they grow up, young people encounter various temptations, due to which they can stray from the right path, when they begin to run away from school, roam, that is, their behavior becomes deviant, and in certain cases they also begin to commit criminal offenses (Živanović, 2014, p. 9).

Thus, today, there is almost no country in which minors do not have a special criminal legal status in relation to adults. According to research, Belgium is often cited as an example of a country in which the welfare model is represented, with a high limit of the minimum age necessary for criminal liability of 18 years. A similar reputation was built by France by placing education and rehabilitation at the center of youth justice reforms back in the 1940s, but the age limit necessary for criminal liability is nevertheless lower and is 13 years (Urbas, 2000, p. 6). In contrast, the UK and US are traditionally associated with the justice model and the low age of criminal responsibility – 10 years in England and Wales, and as low as 6 years in several US states like North Carolina (Young, Greer & Church, 2017, p. 2017).

3. Criminal law position of minors in positive legislation

Historically, the criminal legislation of Serbia is characterized by two periods of punishment of minors. The first period is characterized by the treatment of minors and the imposition of criminal sanctions in the same way as for adult perpetrators of criminal offenses. Their position was significantly changed by the adoption of the Law on Amendments to the Criminal Code of 1959, which stipulated that juvenile delinquents could no longer be imposed the same penalties as adults. At the same time, with the adoption of this law, the second period of punishment of minors begins. This law established for the first time the sentence of juvenile imprisonment as a special type of criminal sanction that could only be imposed on an older juvenile (aged 16 to 18), under the conditions determined by law (Živanović, 2014, p. 39). With the adoption of this law, the idea arises in our country for the first time that juvenile crime has so many peculiarities that it deserves a special policy of combating it, special penalties adapted to juveniles and special criminal law. This idea was finally shaped many years later within the Law on Juvenile Offenders and Criminal Protection of Juveniles (LJOCPJ) in 2005.

Until the adoption of this law, the criminal legal position of minors in our country was regulated by special units within the general provisions of substantive, procedural and executive criminal legislation. LJOCPJ is a systematized matter of juvenile criminal law with the aim of making criminal law and proceedings against juveniles more humane, efficient and meaningful (Blagić, 2015, p. 35). All this in line with the tendencies of modern criminal policy present in many countries in recent decades, in which the principle of subsidiarity in the application of criminal sanctions comes to the fore in favor of other out-of-court measures of response to criminal behavior of minors. The overall approach in the new law is based on providing the necessary support to children and young people, starting from preventive activities to prevent juvenile delinquency, to employment and independence of young people, i.e. their integration into society after the termination of the measure (Kranjc & Vujošević, 2006, p. 119). Although it is undoubted that such instruments increasingly constitute a means of social reaction towards juvenile delinquents, criminal legislation nevertheless also provides for criminal sanctions that can be imposed on juveniles under special conditions. Almost all modern criminal legislation in the system of criminal law measures to respond to crime also provides for a special system of juvenile criminal sanctions, which largely relies on the standards established by international acts, adopted within and under the auspices of the UN and the regional organization of the Council

of Europe (Đukić & Jovašević, 2010). The possibility of imposing criminal sanctions on minors is conditioned by the best interest and minimum age for criminal liability, which is one of the general principles of the Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules). The Beijing Rules stipulate that this limit must be set to match the emotional, intellectual and mental maturity of the minor (Lukić & Samardžić, 2012, p. 352).

Taking into account the aforementioned principles contained in international legal documents, minors, as a specific age category of persons, have a special legal position in our country and are privileged in relation to adult perpetrators owing to the fact that immature persons, unaware of all the consequences of that decision, have entered into criminality, and owing to the knowledge that their return to a socially acceptable path has a better chance because education and maturing is yet to be found in the path of minors as persons of that age (Bugarski, Ristivojević & Pisarić, 2016, p. 68).

Thus, in our system of juvenile criminal law, there are different mechanisms for responding to juvenile delinquency, and the reaction of the state is conditioned by the age of the perpetrator of the criminal offense. Article 2 of the LJOCPJ provides for the exclusion of criminal sanctions against children, which implies that a person who has not reached the age of fourteen years at the time of committing an unlawful offense, as provided for by the law, cannot be imposed criminal sanctions nor can other measures be applied which are provided for by this law.

Furthermore, Article 3 of the LJOCPJ stipulates the age limits within which one person is considered a minor in the criminal law sense of the word. Thus, it is envisaged that a minor is considered to be a person who at the time of committing the criminal offense has reached the age of fourteen and has not reached the age of eighteen. Our criminal legislation further prescribes the lower and upper age limit of minors and classifies minors into two categories – younger and older. A junior juvenile is a person who, at the time of the commission of the criminal offense, has reached the age of fourteen and has not reached the age of sixteen. An older juvenile is a person who, at the time of the commission of the criminal offense, has reached the age of sixteen and has not reached the age of eighteen. The law recognizes another special category, a younger adult who turned eighteen at the time of the commission of the criminal offense, and who did not turn twenty-one at the time of the trial. At this point, it is important to note that these limits, from a bio-psychological point of view, are relative in nature, and that the onset of maturity in minors has an individual character (Bojić & Joksić, 2012, p. 44).

Juveniles may be sentenced to corrective measures, juvenile imprisonment and security measures provided for in Article 79 of the Criminal Code. Only corrective measures can be imposed on younger juveniles, while in addition to corrective measures, older juveniles can exceptionally be sentenced to juvenile imprisonment, because their level of mental development is higher and approaches the mental development of adults.

4. Juvenile imprisonment

Our criminal legislation knows only one sentence that can be applied to a juvenile offender, and that is juvenile imprisonment. As a rule, only corrective measures are applied to them, and the imposition of a sentence of juvenile imprisonment occurs only exceptionally, with the fulfillment of certain conditions and the assessment of the juvenile judge that this is necessary in order to achieve the purpose of punishment (Stojanović, 2015, p. 383).

Juvenile imprisonment may not be shorter than six months or longer than five years, and shall be imposed for full years and months. For a criminal offense punishable by imprisonment of twenty years or more, or in the case of at least two criminal offenses punishable by imprisonment of more than ten years, juvenile imprisonment may be imposed for a period of up to ten years.

According to Article 28 of the LJOCPJ, an older juvenile who has committed a criminal offense for which the law prescribes a prison sentence of more than five years, may be sentenced to juvenile imprisonment if due to the high degree of guilt, nature and severity of the criminal offense it would not be justified to impose a corrective measure. Also, in Article 40, paragraph 2 LJOCPJ stipulates that the sentence of juvenile imprisonment under the same conditions may be imposed on an adult who committed a criminal offense as a juvenile, and at the time of trial did not reach the age of twenty-one years.

Thus, the conditions that must be met in order to be able to impose a sentence of juvenile imprisonment relate to:

- 1) Age of the juvenile – The perpetrator of the criminal offense must be an older juvenile, i.e. a person who has reached the age of sixteen years at the time of committing the criminal offense, and has not reached the age of eighteen years. The reason for accurately determining the age limit lies in the assumption of biopsychological maturity and development of older minors, because this is one category of persons who is able to understand the importance of their actions and at the same time be responsible for them (Todorović, 2017, p. 16). Namely, minors of a certain age are considered to be

criminally responsible persons because they possess a certain degree of psychophysical maturity. In this way, their ability to reason and decide exists at the time of the commission of the crime, i.e. the juvenile is able to understand the significance of their act and can manage their actions. These circumstances certainly indicate that certain criminal sanctions can be applied to them, assuming that they are accountable, and thus criminal proceedings can be conducted against them (Blagić, 2015, p. 52). However, there are exceptions to this assumption, and these claims should be taken with reservations, because it is known that the physical development of a minor often does not follow their mental maturity. Bearing this in mind, even when there is a possibility of imposing this sentence, because the condition related to the age of the minor is met, the court must also take into account all other circumstances related to the personality of the minor and only exceptionally impose the sentence of juvenile imprisonment – when it is unequivocally convinced of the existence of psychophysical maturity and development of the minor (Blagić, 2015, p. 131). Numerous studies indicate the prevalence of certain negative personality characteristics of juvenile delinquents such as: lower level of intelligence than non-delinquents, the presence of psychopathic personality traits (self-centeredness, delusions of grandeur, lack of responsibility, emotional instability), aggressiveness and lack of motivation for work and discipline, lack of positive attitudes towards the environment in which they live, starting from parents to social institutions, but also committing criminal offenses for fun. On the other hand, in female juvenile offenders, egocentricity, lack of certain goals and plans for the future, malleability, introversion and difficult adaptation, neuroticism, pathological lying, impulsivity, etc. are most often observed (Miladinović, Konstantinović-Vilić & Đurđić, 1992, p. 108).

The second category of person to whom the sentence of juvenile imprisonment may be imposed is a younger adult, i.e. a person who was a minor at the time of the commission of the criminal offense, and at the time of the trial did not reach the age of twenty-one years. Although most legislation attains criminal legal adulthood by the age of eighteen, this does not mean that this ends the period of development and maturity of a person. Some authors emphasize that younger adults have not reached the level of mental and physical maturity found in adults, i.e. that there is an intermediate period in the

development and maturation of a person between adolescence and the age of full maturity, and this category of persons is given a special criminal status and thus treated differently compared to other adults (Lazarević, 1961, p. 555). This special criminal legal status was regulated by the legislator in Articles 40 and 41 of the LJOCPJ, which prescribe in detail the conditions under which a younger adult may be imposed appropriate criminal sanctions provided for juveniles, including juvenile imprisonment (Rakić, 2019, pp. 19-22).

- 2) Execution of an offense punishable by imprisonment for more than five years by law – In order to meet this condition, it is necessary for an older juvenile to commit a more serious criminal offense punishable by more than five years. The severity of the prison sentence prescribed by law shall be determined according to the maximum, and not according to the minimum penalty. Thus, the threatened minimum prison sentence is not binding on the court when assessing the overall conditions for imposing a sentence of juvenile imprisonment. In this regard, if a juvenile has committed the criminal offense of enabling the consumption of narcotic drugs by inducing the consumption of narcotic drugs, by giving narcotic drugs or by making the premises available for this purpose (Article 247, paragraph 1 of the Criminal Code), they could not be sentenced to juvenile prison because a special maximum sentence of imprisonment of up to five years is prescribed, so this criminal offense is of no relevance. But such a possibility exists if the act was committed, for example, against a minor or mentally ill person (paragraph 2 of the same Article) because a special maximum prison sentence of up to ten years is prescribed for this form (Perić, 2007, p. 72). By prescribing the conditions in this way, the legislator singles out certain criminal offenses taking into account their severity, i.e. the degree of violation or endangerment of the protective facility. Namely, there are a number of serious criminal offenses, which are determined according to the general maximum, i.e. a special maximum is taken into account for the criminal offenses for which it is prescribed (Blagić, 2015, p. 133).

Therefore, the prescribed sentence, over five years for the committed crime, is relevant. This condition is assessed by the court in each specific situation, and the fulfillment of the conditions does not oblige the court to punish the minor, but it can also impose a corrective measure, if this sanction

can achieve the purpose of its imposition, and especially if it is justified in accordance with the circumstances of the specific case that we will talk about in the next part of the paper.

- 3) The existence of certain circumstances that indicate that in this particular case it is not justified to impose a corrective measure – In order to fulfill this condition, it is necessary that there be a high degree of guilt of the juvenile offender and that the nature and gravity of the committed criminal offense indicate the necessity of imposing juvenile imprisonment. As for the guilt of minors, since the LJOCPJ does not provide for special rules for determining the guilt of minors, it is determined in the same way as for adults, by applying the general rules provided for in Article 22 of the CC of the Republic of Serbia. Therefore, guilt exists if the perpetrator, at the time of committing the criminal offense, was accountable, acted with intent or negligence, and was aware or was obliged and could have been aware that his act was prohibited (Vuković, 2021, p. 196). However, in order for the court to declare the sentence of juvenile imprisonment, it is necessary that there is a high degree of guilt on the part of the perpetrator, above the usual, average degree of guilt of the perpetrator, which is valued on the basis of circumstances such as brutality, cruelty, self-interest, lack of remorse, recklessness, perseverance, etc. When considering this issue, Stojanović emphasizes that the degree of guilt is required as a decisive circumstance on which the imposition of a sentence of juvenile imprisonment may depend, as opposed to the imposition of a sentence on adults where a high degree of guilt refers only to the measurement of the sentence, in terms of the existence of mitigating or aggravating circumstances (Stojanović, 2015, p. 354). On the other hand, circumstances that lead to mitigation of the sentence, such as significantly reduced sanity, indicate that there is no high degree of guilt, and there is no basis for punishing minors. There is a certain dilemma in this regard with regard to acts committed involuntarily. Negligence undoubtedly represents a milder form of guilt of the perpetrator, but even when committing an act negligently, the consequences can be severe, and they can manifest recklessness and the absence of the minimum of attention necessary for socially acceptable behavior (Vuković, 2021, p. 224).

The second group of circumstances that must exist are those related to the nature and gravity of the crime committed. The nature and gravity of

the crime are two circumstances, interrelated and cumulatively listed in the instance of the punishment of an older minor. When it comes to the nature of the criminal offense, then, first of all, it refers to more serious criminal offenses (such as sexual assault of a disabled person referred to in Art. 179 of the CC, sexual assault of a child referred to in Art. 180 of the CC, etc.), which are valued differently on different occasions, given the existence of special circumstances during execution. In many special situations, for example, when committing a criminal offense of aggravated theft at the time of floods, earthquakes, fires or taking advantage of helplessness, it is considered that the manner of committing the criminal offense at the time of these inconveniences and difficulties is all the more reason for a special consideration of the application of this penalty. When violating or endangering a protective facility when committing criminal offenses, on special occasions the manner, circumstances, motives, as well as the motives of execution should be taken into account (Radulović, 2010, p. 151).

Therefore, when the legal conditions are met, the sentence of juvenile imprisonment can be imposed, but at the same time this does not mean that the court must impose it. The court has no obligation to apply this penalty, because it is optional, and the legislator insists on the exceptionality of its pronouncement only when the aforementioned conditions are met and when the judge comes to the conclusion that corrective measures would not achieve the purpose of punishment. In practice, this penalty is rarely imposed in criminal proceedings, while corrective measures are most often imposed. Some authors point out that this is quite understandable and that the sentence of juvenile imprisonment should be imposed only when it is truly necessary, given that going to prison is a difficult experience for every person, even for the one who has already been in prison, and it can happen that an older juvenile after leaving prison becomes even more “dangerous” to society, in the sense that a criminal infection has occurred and that we have only gained another “criminal” with the imposed sentence (Ristivojević & Milić, 2016, p. 155).

Making a decision on imposing a sentence of juvenile imprisonment is a very delicate issue that requires special dedication and expertise of juvenile judges. Regarding the manner of sentencing itself, Blagić points out that there are certain problems in practice related to clarifying and presenting the reasons that are decisive for the application of this sentence. Namely, the courts do not present or state decisive facts in the verdict, which influenced the decision to impose this sentence. Most often, the general position, which is applied by judges, is not to enter into special reasoning and grading of circumstances,

so it often happens that first instance verdicts are appealed, with a call for an absolutely significant violation of the provisions of the criminal procedure of Art. 438, para. 2, item 2 of the LCP (Blagić, 2015, p. 151). In order to avoid these and similar problems in practice, it is very important to thoroughly consider all the circumstances related to the person of the minor and the committed criminal offense, and then explain them in detail in the judgment.

When it comes to the execution of juvenile imprisonment, it is regulated in our legislation by the Law on the Execution of Criminal Sanctions, but also by the general provisions of the Law on the Execution of Criminal Sanctions, which stipulate that the provisions of this Law shall be applied in the procedure of execution of criminal sanctions against juveniles, unless otherwise provided by a special law (Art. 1, para. 2). Therefore, it can be concluded that LJOC PJ is *lex specialis*, and LECS, in the part related to the regulation of the execution of imprisonment, is *lex generalis*. In addition, significant by-laws regulating the issues of institutions where juvenile perpetrators of criminal offenses are accommodated, as well as the position of juveniles in the institution and other issues, are the Decree on the Establishment of the Institute for the Enforcement of Penal Sanctions and the Rulebook on the House Rules of the Correctional Institution for Juveniles. When regulating the execution of juvenile imprisonment, a number of international standards were adopted to formulate more humane rules of treatment for juveniles who are deprived of their freedom (Živanović, 2014, p. 47).

In our country, male juveniles execute this sentence in the Valjevo Correctional Institution, and female juveniles in the special department of the Zabela Correctional Institution Požarevac. Juvenile convicts may remain in the juvenile correctional facility at most up until they reach 23 years of age, and after that they continue to serve the prison sentence as adult convicts. However, juvenile convicts may remain in the juvenile detention facility after this period, but at most until the age of 25, if this is necessary to complete the commenced education or vocational training, or if the remainder of the sentence does not exceed six months (Joksić, 2016, p. 133). One of the basic principles of the execution of criminal sanctions against minors is the principle of individualization. In this regard, LJOC PJ envisages that the execution of juvenile imprisonment is based on an individual treatment program with a juvenile that is adapted to their personality and in accordance with modern achievements of science, pedagogical and penological practice. For this purpose, a special body was formed – an expert team that supervises the implementation of the envisaged individual programs of treatment of juvenile convicts. It is very important to ensure continuous monitoring of general progress or negative

tendencies in the behavior of juvenile convicts in order to achieve the purpose of punishment, which, in addition to special and general prevention, implies that the supervision, provision of protection and assistance, as well as the provision of general and professional training affect the development and strengthening of personal responsibility of minors, in order to ensure the reintegration of minors into the social community (Kovačević, 2015, p. 111).

A juvenile is released from the institution when the sentence of juvenile imprisonment to which they were sentenced expires, and the possibility of conditional release of a juvenile is also envisaged, if they have served a third of the imposed sentence, but not before six months have elapsed and if on the basis of the achieved success of execution it can be reasonably expected that they will behave well when released and will not commit criminal offenses. In addition to conditional release, the court may also order some of the measures of enhanced supervision with the possibility of applying one or more appropriate special obligations (Art. 32. LJOCPJ).

At this point, it is important to note that the treatment of a minor does not end with leaving the institution or prison. S. Konstantinović-Vilić and M. Kostić points out that part of the treatment is post-penal assistance provided after the execution of prison measures and juvenile imprisonment. (Konstantinović-Vilić & Kostić, 2011, p. 201). The need to provide post-penal assistance arises from the fact that the minor was separated from the environment for a certain period of time, and it is necessary to provide them with assistance in order to re-accept social values and because of their successful reintegration into the community, but also to prevent the minor from committing criminal offenses. In addition, the mere stay of a minor in an institution or establishment can result in stigmatization and rejection after leaving the institution. Therefore, treatment of a minor, in and after institutional institutions, must be aimed at preventing additional stigmatization and at minimizing trauma, arising from the separation of minors from the environment (Knežević, 2010, p. 319).

The importance of providing post-penal assistance and guidance to minors after serving their sentence is also discussed in the number of studies conducted in the field of analysis of factors that contribute to the increase of juvenile delinquency. The results of the research indicate the fact that most minors are from materially unsituated families that fail to get minors interested in education – a significant number of minors have dropped out of school and have no motivation to continue the educational process nor prosocial ideas about their future. Most spend unstructured leisure time, without occupations, hobbies, sports or other activities. Also, a significant majority of minors commit crimes under the influence of the desire to assert themselves in the peer group with

which they spend that unstructured time, and the influence of “bad company” and the desire to prove themselves is one of the most common factors of juvenile delinquency (Bugarski, Ristivojević & Pisarić, 2016, p. 60).

In this regard, the legislator envisaged certain obligations of parents, adoptive parents or guardians, institutes and guardianship bodies and regulated in detail the procedure of taking numerous and diverse measures to provide post-penal assistance to a minor, after discharge from the institution or institute, with the aim of mitigating the sharp transition from life in the institution to life outside of it, because the provision of assistance is a necessary step in the reintegration of minors into the social community and contributes to the prevention of repeat criminal behavior (Živković, 2014, p. 55).

5. Conclusion

Juvenile delinquency is a special type of crime perpetrated by persons from 14 to 18 years of age and taking into account their specific characteristics, our legislation imposes special criminal sanctions under this category of delinquents. Juvenile imprisonment is the most severe criminal sanction and the only punishment that can be imposed on a juvenile, when the degree of their educational neglect is extremely high, and the severity of the committed criminal offense and other circumstances require an institutional punishment to be applied to them, provided that the juvenile is older than 16 years.

The purpose of imposing a sentence of juvenile imprisonment is reflected in special and general prevention, but the emphasis is placed on the principle of rehabilitation, the purpose of which is to re-educate and train juveniles to live in accordance with laws and social norms after the execution of the sentence and upon their release. However, one should not lose sight of the retributive character of juvenile imprisonment as a just response of society to the crime committed. There is probably no more sensitive problem in the criminal laws of all countries in the world, than the issue of not only just, but even more so, expedient punishment of juvenile perpetrators of criminal offenses, given the fact that the imposed sentence sanctions the committed act of a juvenile perpetrator, but what is more important for the entire society is that this sentence must represent a warning to all potential juvenile perpetrators of the same, or similar criminal offenses. The Criminal Code of the Republic of Serbia is not an instruction for the upbringing of young people, but the most important task for the survival of our country is left to the institution of the family and the parents themselves, and the Criminal Code is a catalog of committed criminal offenses

and the consequences of their commission, which often stem from the wrong upbringing of parents or even neglect of children at an early age.

In addition, we are witnessing that in the times that have come, the rights of children and minors are so “elevated” that in more and more segments of social life they are equated with the rights of an adult, and even put themselves above them. This statement logically follows the question of whether it is in accordance with the scope of the given rights to correctly harmonize obligations and responsibilities, and one of them is certainly criminal liability and the obligation to accept a sentence commensurate with the committed criminal offense, as a generally accepted social rule.

After analyzing the existing legal solutions, it can be concluded that our juvenile criminal legislation ranks among the laws of more advanced countries. The provisions concerning the punishment of juvenile imprisonment are prescribed in accordance with the set international and European standards, take into account the age and the interests of juveniles. However, it could be said that a possible problem is the very mild criminal policy of the courts, i.e. the exceptionality of imposing a sentence of juvenile imprisonment in practice. This claim is supported by statistical data that show an incredibly small percentage of juvenile imprisonment sentences imposed in the total structure of imposed criminal sanctions against juveniles in our country. Namely, in the past 10 years, the total number of juvenile imprisonment sentences imposed does not exceed even 1% of the total criminal sanctions imposed on juveniles. Bearing this in mind, we come to the conclusion that our judiciary should not hesitate to use the existing modalities of punishing minors, thus protecting society as a whole and putting the interest of society before the interests of the individual, no matter how (few) years old that individual is.

Grbić Bogdanka

Pravni fakultet Univerziteta u Novom Sadu, Srbija

KAZNA MALOLETNIČKOG ZATVORA

REZIME: Maloletnička delinkvencija predstavlja negativnu društvenu pojavu i sociološko-pravni problem koji postoji oduvek, u svim društvima ovog sveta. U našoj zemlji, društvena reakcija na maloletnički kriminal evoluirala je tokom vremena i u početnom periodu maloletnici su kažnjavani kao odrasli, a primarna svrha kažnjavanja bila je represija. Donošenjem

Zakona o maloletnim učinocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica 2005. godine, situacija se promenila i prihvaćen je sistem kažnjavanja koji prvenstveno karakteriše zaštita, vaspitanje i rehabilitacija maloletnika, a u tu svrhu izriču se najpre vaspitni nalozi. Međutim, onda kada dimenzije maloletničkog kriminaliteta prevazilaze mogućnosti koje nudi primena vaspitnih naloga, izriču se krivične sankcije. Kazna maloletničkog zatvora je jedina kazna koju poznaje naše maloletničko krivično zakonodavstvo i izriče se kao “ultima ratio” prema starijim maloletnicima, samo kada su ispunjeni zakonom određeni uslovi. Predmet rada je upravo analiza sadržine kazne maloletničkog zatvora, zakonskih uslova za izricanje i načina njenog izvršenja u cilju sagledavanja osnovnih pozitivnopravnih rešenja u Republici Srbiji koji se odnose na kaznu maloletničkog zatvora i krivičnopravnog statusa maloletnika.

Ključne reči: maloletnički zatvor, maloletnika delinkvencija, krivične sankcije, maloletnici.

References

1. Bilten (2021). *Maloletni učinionci krivičnih dela u Republici Srbiji – prijave, optuženja i osude* [Juvenile offenders in the Republic of Serbia – reports, accusations and convictions]. Beograd: Republički zavod za statistiku
2. Blagić, D. (2015). *Maloletnički zatvor u krivičnom pravu Republike Srbije – doktorska disertacija* [Juvenile prison in the criminal law of the Republic of Serbia – doctoral dissertation]. Niš: Pravni fakultet u Nišu
3. Bugarski, T., Ristivojević, B., & Pisarić, M. (2016). Faktori maloletničkog kriminaliteta – značajni egzogeni faktori i njihove praktične implikacije u sudskom postupku [Factors of juvenile delinquency – significant exogenous factors and their practical implications in court proceedings]. *Sociološki pregled*, 50(1), pp. 59-89
4. Dignan, J. (2002). *Juvenile Justice Systems: A Comparative Analysis*. Downloaded 2023, August 20 from https://www.oijj.org/sites/default/files/documentos/documental_1263_en.pdf.
5. Drakić, D. (2010). *O krivičnoj odgovornosti maloletnika* [On the criminal responsibility of juveniles] Novi Sad: Izdavačka knjižarnica Zorana Stojanovića

6. Đukić, B., & Jovašević, D. (2010). *Kriminalitet maloljetnika i mjere društvene reakcije u Republici Srpskoj* [Juvenile crime and measures of social reactions in Republika Srpska]. Banja Luka: Defendologija
7. Joksić, I., & Bojić, B. (2012). Krivičnopravni status maloletnika u međunarodnim i evropskim instrumentima [Criminal legal status of minors in international and European instruments, European legislation] *Evropsko zakonodavstvo* 11(39-40), pp. 38-59
8. Joksić, I. (2016). Maloletnički zatvor u penitencijarnoj praksi [Juvenile prison in penitentiary practice], *Bezbednost*, 58(1) 129-145
9. Kovačević, M. (2015). Diverzioni koncept postupanja prema maloletnim učinocima krivičnih dela – opšta razmatranja i osvrt na Srbiju [Diversionary concept of dealing with juvenile offenders – general considerations and a reference to Serbia]. *Pravni zapisi*, 6(1), pp. 110-125
10. Konstantinović-Vilić, S., & Kostić, M. (2011). *Sistem izvršenja krivičnih sankcija i penalni tretman u Srbiji* [The system of execution of criminal sanctions and penal treatment in Serbia]. Niš: Sven
11. Knežević, S. (2010). *Maloletničko krivično pravo: materijalno, procesno i izvršno*, [Juvenile criminal law: substantive, procedural and enforceable] Niš: Centar za publikacije Pravnog fakulteta
12. Kranjc, S., & Vujošević, M. (2006). *Mladost slomljenih krila* [Youth with Broken Wings]. Niš: Oktobarski susreti u socijalnoj zaštiti
13. Lazarević, Lj. (1961). Mlađi punoletnici nova kategorija u našem krivičnom pravu [Young adults are a new category in our criminal law]. *Anali Pravnog fakulteta u Beogradu*, 4(1), pp. 553-558
14. Lukić, T., & Samardžić, S. (2012), Maloletnici u krivičnom postupku [Juveniles in criminal proceedings]. *Zbornik radova Pravnog fakulteta*, 46(1), pp. 349-367
15. Miladinović, V., Konstantinović-Vilić, S., & Đurđić, V. (1992). *Kriminalitet maloletnica* [Criminality of female juveniles]. Beograd: Institut za kriminološka i sociološka istraživanja
16. Perić, O. (2007). *Komentar Zakona o maloletnim učinocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica — drugo dopunjeno izdanje* [Commentary of the Law on Juvenile Offenders and the Criminal Protection of Juveniles – second amended edition]. Beograd: Službeni glasnik
17. Pravilnik o kućnom redu kazneno-popravnog zavoda za maloletnike [Rulebook on the house rules of the correctional facility for juveniles], *Službeni glasnik RS*, br. 71/06

18. Radovanov, A., & Joksić, I. (2018). Položaj maloletnika u porodičnom i krivičnom pravu Republike Srbije [The position of juveniles in the family and criminal law of the Republic of Serbia], *Vojno delo*, 70(6), pp. 154-165
19. Radulović, Lj. (2010), *Maloletničko krivično pravo* [Juvenile criminal law]. Beograd: Pravni fakultet Univerziteta u Beogradu
20. Rakić, J. (2019), Krivičnopravni status mlađih punoletnih učinilaca krivičnih dela u Evropi sa osvrtom na Republiku Srbiju [The criminal law status of young adult offenders in Europe with reference to the Republic of Serbia]. *Revija za kriminologiju i krivično pravo*, 1(1), pp. 9-27
21. Ristivojević, B., & Milić, I. (2016). Odgovornost roditelja za prekršaje koje učine njihovi potomci [Liability of parents for misdemeanors committed by their offspring]. *Anali Pravnog fakulteta u Beogradu*, 64(1), pp. 154-174
22. Stajić, Lj. & Stanarević, S. (2011), Modeli ostvarivanja bezbednosti u školama u Republici Srbiji [Models of achieving safety in schools in the Republic of Serbia], *Zbornik radova Pravnog fakulteta*, 45(1), pp. 127-140
23. Smith, A. T. H. (1994). Doli Incapax under Threat, *The Cambridge Law Journal*, 53(3), pp. 426–28. Downloaded 2023, August 20 from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2391037
24. Stojanović, Z. (2015). *Krivično pravo – opšti deo* [Criminal law – general part]. Beograd: Pravni fakultet u Beogradu
25. Todorović, A. (2017), *Maloletnički zatvor – diplomski rad* [Juvenile prison – graduate thesis]. Beograd: Fakultet bezbednosti, Univerzitet u Beogradu
26. Urbas, G. (2000). The Age of Criminal Responsibility, *Australian Institute of Criminology*. Downloaded 2023, August 21 from <https://www.aic.gov.au/publications/tandi/tandi181>
27. Uredba o osnivanju zavoda za izvršenje zavodskih sankcija u Republici Srbiji [Regulation on the establishment of institutions for the execution of institutional sanctions in the Republic of Serbia] *Službeni glasnik RS*, br. 20/06, 89/09, 32/10, 53/11 i 11/17
28. Vuković, I. (2021). *Krivično pravo – opšti deo* [Criminal law – general part]. Beograd: Pravni fakultet u Beogradu
29. Živković, J. (2014). *Kazna maloletničkog zatvora – master rad* [Juvenile prison sentence – master's thesis]. Niš: Pravni fakultet u Nišu

30. Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica [Law on Juvenile Offenders and Criminal Protection of Juveniles], *Službeni glasnik RS*, br. 85/05
31. Zakon o izvršenju krivičnih sankcija [Law on Execution of Criminal Sanctions]. *Službeni glasnik RS*, br. 55/14 i 35/19
32. Young, S, Greer, B., & Church, R. (2017). Juvenile delinquency, welfare, justice and therapeutic interventions – a global perspective. *BJPsych Bull*, 41(1), pp. 21-29. Downloaded 2023, August 15 from <https://www.aic.gov.au/publications/tandi/tandi181> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5288089/>.